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2 **Minutes (draft)**
3 **FORENSIC SCIENCE BOARD MEETING**
4 **October 17, 2007 at 10:00 a.m.**
5 **DFS Central Laboratory, Training Room 1**
6

7 Board Members Present:

8
9 Mr. Steven Benjamin
10 Mr. Joseph Bono, Chair
11 Ms. Linda Carne (designee for Mr. Robert Jensen)
12 Mr. Craig Hartley (designee for Mr. Leonard Cooke)
13 Ms. Katya Herndon (designee for Mr. Karl Hade)
14 Mr. Alan Katz (designee for Ms. Marla Decker)
15 Norah Rudin, Ph. D. (designee for Mr. Barry Fisher)
16 Ms. Elizabeth S. Russell
17 Major Tavenner (designee for Colonel W. Steven Flaherty)
18 Mr. James Towey (designee for Delegate D. Albo)
19

20 Board Members Absent:

21 Marcella Fierro, Ph.D.
22 Sheriff F.W. Howard
23 Mr. S. Randolph Sengel
24

25 Staff Members Present:

26
27 Ms. Wanda Adkins, Office Manager
28 Mr. Jeff Ban, Acting Forensic Biology Section Chief, Central Laboratory Director
29 David Barron, Ph.D., Technical Services Director
30 Ms. Donna Carter, Fiscal Officer
31 Mr. Doug Chandler, Technology Services Manager
32 Ms. Jessica Creed, Board Secretary
33 Ms. Leslie Ellis, Human Resources Director
34 Ms. Michele Gowdy, Department Counsel
35 Mr. Brad Jenkins, Mitochondrial DNA Supervisor
36 Mr. Ron Layne, Director of Administration and Finance
37 Ms. Alka Lohmann, Breath Alcohol Section Chief
38 Mr. Pete Marone, Director, Department of Forensic Science
39 Mr. Kevin Patrick, Western Laboratory Director
40 Mr. Steve Sigel, Deputy Director
41 Mr. Sherwood Stroble, Policy, Planning and Budget Manager
42 Ms. Susan Uremovich, Eastern Laboratory Director
43 Ms. Amy Wong, Northern Laboratory Director
44
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47 Call to Order:

48

49 The meeting was called to order at 10:02 a.m.

50

51 Adopt Jessica Creed as the new Board Secretary

52

53 Mr. Bono requested a motion to adopt Jessica Creed as the new Board Secretary. Motion
54 was made by Ms. Katya Herndon, seconded by Ms. Linda Carne and passed by
55 unanimous vote.

56

57 Adoption of Agenda:

58

59 Mr. Bono made an amendment to the agenda that, *Item V. Legislative Proposals*, would
60 be addressed within the Department Director's Report. He asked if there was a motion to
61 adopt changes and agenda. Mr. Alan Katz made a motion to adopt the agenda with
62 changes, seconded by Ms. Katya Herndon and passed by unanimous vote.

63

64 Approval of draft minutes:

65

66 Mr. Bono asked if there were any corrections to be made to the minutes from the August
67 8, 2007 meeting.

68

69 Mr. Benjamin referenced lines 236-238 regarding the discussion of his motion on the
70 definition of "inconclusive" in post-conviction testing. He requested this section be
71 transcribed and placed as an addendum to the August 8, 2007 meeting minutes.

72

73 Ms. Michele Gowdy mentioned a typo in line 167, the word "and" should be "an". Ms.
74 Herndon also mentioned other corrections; on line 20, "Representative Albo" should be
75 "Delegate Albo" and in line 244 her name was spelled incorrectly.

76

77 Mr. Benjamin brought to the Board's attention lines 204-208 regarding Director
78 Marone's Director's Report referring the Mary Jane files. There was a discrepancy in the
79 numbers that Director Marone reported at the meeting and the numbers that were
80 recorded in the August minutes. Steven Benjamin requested that a full transcription of
81 that section of the Director's Report be attached as an addendum to the minutes.

82

83 Mr. Bono asked for a motion to accept the minutes as amended to include the two
84 addendums. Mr. Towey made a motion, seconded by Norah Rudin, Ph.D., and it passed
85 unanimously.

86

87 Chairman's Report:

88

89 Mr. Bono informed the Board that the November 1 Report would be addressed as Item IX
90 of the agenda and the Mid-Atlantic Innocence Project would give a presentation during
91 the Public Comment section of the meeting.

92

93 Director's Report:

94

95 Director Marone explained the workload summary handout in the Board's packet which
96 summarized the workload and backlog reports by section.

97

98 The Department is currently recruiting the position of Forensic Science Manager 1 (DNA
99 Section Chief). This position is being nationally recruited and will be posted from
100 9/19/07 - 10/31/07. The following are some of the qualifications for this position:

- 101 • Master's Degree or Waiver by ASCLD
- 102 • 3 years of Laboratory experience as a Forensic Nuclear DNA examiner
- 103 • QA/QC experience
- 104 • Expert testimony
- 105 • Research and Methods development

106

107 Director Marone summarized DFS building projects: 1) Northern Laboratory
108 construction has begun with an expected move-in date of April 2009; 2) Central
109 Administration is moving from Central Laboratory to Biotech 8 in February 2008; and 3)
110 Eastern Laboratory expansion on the 5th floor is continuing to be negotiated with the City
111 of Norfolk.

112

113 Director Marone updated the Board on status of the budget. DFS began FY2008 with an
114 increase of approximately \$1.5 million in appropriations, as compared to funding
115 provided in FY2007. The majority of this additional funding was for increases in
116 operation and maintenance expenses of the laboratories. At the beginning of the second
117 quarter of FY2008, DFS was advised that the Governor requested that all state agencies
118 take a 5% reduction. DFS' reduction would be \$1,693,100.00 and must be achieved by
119 the end of FY2008. Director Marone summarized for the Board the reductions that DFS
120 would be implementing.

121

122 Director Marone next addressed the DNA/Serology case files. He reported that 518,431
123 files have been screened for evidence at this time out of approximately 534,000:

124

- 125 • 2208 cases had crime scene evidence and a suspect.
- 126 • 837 cases had crime scene evidence and no suspect.
- 127 • 1911 cases had only known samples.
- 128 • 473 had been reviewed by Forensic Biology.
- 129 • 233 had been determined to be ineligible (76 had no conviction or not guilty plea
and 157 were based on forensic biology criteria).
- 130 • 166 were sent to contractors
- 131 • 107 had results that have been return to the Department

132

133 As of October 2007:

134

- 135 • 473 of the 2,208 cases eligible for DNA analysis have been reviewed by DFS
- 136 • 233 cases have been determined ineligible
- 137 • 66 cases require additional information, which DFS is seeking, before it can be
determined if the case is eligible for DNA testing

- 138
- 166 cases have been sent to the contract laboratory for testing
- 139
- 8 cases will be sent to the contract laboratory in the near future
- 140
- 60 of the cases returned from the contract laboratory have been reviewed
- 141
- 6 of the cases returned were determined after further investigation to not meet the
- 142
- criteria for further evaluation (the defendant was not convicted, convicted of a
- 143
- misdemeanor, or no listed suspect was identified)
- 144

145 Director Marone informed the Board that DFS had met with the Governor and his Chief
146 of Staff on the status of the Mary Jane files. Meetings have also been scheduled for
147 October 19, 2007 with the Commonwealth's Attorneys' Service Council and October 22,
148 2007 with the Mid-Atlantic Innocence Project to discuss and review the Mary Jane
149 protocols.

150

151 Mr. Benjamin inquired if the Governor would be making the results of the Mary Jane
152 files public? Director Marone responded that the Governor has the information and it
153 would be his decision whether to make the results public.

154

155 Norah Rudin, Ph.D., inquired if the original 31 files were part of the 518,431 files?
156 Director Marone replied that the original 31 files were separate from the 518,431. At the
157 completion of the required 10% sampling of case files it was decided that DFS would
158 continue to review all files from 1973-1988.

159

160 Mr. Bono requested that at future Board meetings a flow chart with the Mary Jane cases
161 and numbers be prepared as a handout for the Board.

162

163 Norah Rudin, Ph.D., asked if there is a mechanism by which a convicted felon not
164 meeting the criteria could request testing.

165

166 Mr. Benjamin responded although there is a testing statute in the Code of Virginia, it may
167 not apply and would require a legislative change, if DFS did not have a policy.

168

169 Ms. Herndon added that the post conviction testing statute applies to any person that is
170 convicted of a felony.

171

172 Norah Rudin, Ph.D., asked if there was a way to notify the suspects whose Mary Jane
173 case files have biological evidence in them since they do not know that evidence may still
174 exist in their respective case file.

175

176 Mr. Bono recommended writing letters to the suspects and Mr. Benjamin agreed that the
177 suspects should be notified of the evidence in their file. Mr. Bono requested that Mr.
178 Benjamin draft a proposal for the Board's review at the next Board Meeting.

179

180 Ms. Herndon stated that the Board should not give the suspects legal advice. The Board
181 should give the Mid-Atlantic Innocence Project the list of suspects to be notified of the
182 evidence that still exist in their case file.

183

184 Director Marone continued his report regarding the Department's two legislative
185 proposals that have been approved by the Secretary of Public Safety. The first seeks to
186 define "Ammunition"; the second seeks clarification of Sex Offender Registry to codify
187 the fact that misdemeanors should be placed into the DNA data bank.

188

189 Update by DFS on R. Sengel's Regional Laboratory Visits:

190

191 David Barron, Ph. D., gave a presentation on concerns that Mr. Sengel reported at the
192 August meeting that arose from his visits to the regional laboratories.

193

194 November 1, 2007 Report

195

196 Mr. Bono stated that it is his responsibility to provide to the Chairmen of the Virginia
197 State Crime Commission, the Senate Finance Committee and the House Appropriations
198 Committee a report from the Forensic Science Board before November 1st of each year.

199

200 Ms. Herndon stated some corrections needed to be made to the recipients listed on the
201 November 1 report.

202

203 Mr. Benjamin pointed out that on page 2 in the Serology Case Review Section it states
204 the number of cases as 2206 instead of 2208 cases.

205

206 Ms. Herndon recommended an introductory sentence for the Serology Case Review
207 Section to be added to explain the numbers and how they were derived.

208

209 Mr. Bono agreed that the corrections/additions be made to the November 1 report so that
210 it could be signed and forwarded to the appropriate members of the legislation.

211

212 Selection of future meeting date(s):

213

214 Mr. Bono reported that the 2008 meetings are scheduled for January 9, 2008, May 7,
215 2008, and August 6, 2008, all starting at 10:00 a.m. The final meeting of 2008 is
216 tentatively scheduled for October 22, 2008, to allow the Board to meet before the
217 November 1 report is due.

218

219 New Business:

220

221 There was no new business to discuss.

222

223 Public Comment:

224

225 Mr. Bono received a letter from the Shawn Armbrust, Executive Director of the Mid-
226 Atlantic Innocence Project requesting permission to give a presentation to the Board.

227

228 Ms. Armbrust presented a proposal on modifying the Virginia Post Conviction DNA
229 Statute (Virginia Code Section 19.2-327.1) to allow the defendants' to obtain Post

230 Conviction testing not performed by the Department of Forensic Science. She presented
231 two cases in which she believes Y-STR testing would be appropriate. Y-STR testing is
232 not currently performed by the Department of Forensic Science.
233

234 Mr. Michael Harris and Mr. Michael Hash were both convicted of two separate rapes
235 where DNA testing was conducted. In Ms. Armbrust's opinion Y-STR testing could
236 assist in these cases. Ms. Armbrust explained that Ms. Cassie Johnson employed by
237 Orchid Cellmark would inform the Board in detail on how the results of the Y-STR
238 testing would be beneficial for some defendants.
239

240 Ms. Cassie L. Johnson, Supervisor and Technical Leader for Y-STR and Mitochondrial
241 testing at Orchid Cellmark, presented a power point presentation in detail about Y-STR
242 testing.
243

244 Norah Rudin, Ph. D., commented on how she supports the use of Y-STR testing.
245

246 Mr. Benjamin asked if Ms. Armbrust would have an objection to adding a subparagraph
247 to her proposed legislation. He suggested the costs should be borne by the petitioner if the
248 testing is ordered at a laboratory other than the Department of Forensic Science.
249

250 Ms. Armbrust said that she saw no problem with Mr. Benjamin's suggested changes at
251 this time.
252

253 Mr. Benjamin suggested that the wording "cannot" be substituted with "does not" in two
254 separate places in their document.
255

256 Ms. Armbrust had no objections.
257

258 Mr. Bono asked if the Board could draft a proposal to be sent to the General Assembly.
259

260 Mr. Hartley asked from a law enforcement stand point if there is a difference between
261 obtaining a DNA sample for STR vs. Y-STR testing. Ms. Armbrust commented that the
262 collection procedure is the same.
263

264 Director Marone commented that the timeframe for DFS to submit legislation to the
265 Secretary of Public Safety has passed and the request for Y-STR testing should be made
266 after STR testing was performed by DFS.
267

268 Ms. Russell commented that every state agency has a procedure for reviewing legislation
269 that affects their agency. If the proposal from the Innocence Project was endorsed by
270 someone in the legislature, then the agency would have an opportunity to comment on its
271 impact.
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273 Mr. Bono stated that he would totally endorse this legislation, if the laboratories were
274 accredited by ASCLD-LAB.
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Adjourn:

The meeting adjourned at 11:47 a.m.

Addendum #1

**Transcription of Audio Recording from
October 17, 2007 Forensic Science Board Meeting
Mary Jane DNA/Serology Case File Review**

Mr. Marone: The status of where we are with the post conviction testing-the Mary Jane Files. Some of these numbers are very familiar to most of you. The number now comes, or the numbers now that we have, are that we identified 534,000 files-all the files in the Department of Forensic Science from 1973 to 1988. Of those files, 518,431 have been reviewed. That's to see if there's any type of evidence or material in those files, so we have another 12,000 – 15,000 or so to finish up on those. And I don't want to take a long time going into how we are calling out those cases, but the bottom line is that of all the reviews we've had to go through, 2,208 cases with crime scene evidence and a suspect. In other words, there's evidence in there and a suspect name. What we have to do then is to find out if that suspect is in fact convicted of that crime before we move on. That's where we're getting a lot of requests or we're making a lot of requests and getting help from State Police to track these down, Commonwealth Attorneys', the Clerks of Courts to find out exactly whether that individual was convicted of a particular crime. In many many instances there are multiple convictions and just because a person has been convicted, doesn't mean it's that one. And we have to sort that out. So 2,208 have cases of crime scene evidence and a named suspect. There's 837 cases with crime scene evidence and no suspect name. So those are unknowns. And right now, at this point, we're not doing anything with those cases. The emphasis of this project is to see if there's anyone who has been wrongfully convicted. 473 of those 2,208 had been reviewed by the forensic biology section to see if that if it meets the criteria that was originally set up by Governor Warner and that the person is in fact, that we have all the evidence that we need to move forward on it. Of that 473, 233 have been determined to not meet that criteria. Either it's not a homicide, aggravated assaults, rape case. You know, the B&E's and those types of cases, we're not looking at. We're looking at the higher level felony cases. 76 have been eliminated because there was no conviction or the individual was found not guilty or whatever charges reduced, whatever. 157 have been based on forensic biology criteria, that's when we don't have the proper, probative pieces of evidence in the case file. 166 cases have gone on to the contract laboratory for analysis. Of those 166, 107 have been returned with results. And we've looked at, I don't have that last number

Dr. Rudin: I'm sorry, how many for results?

320 Mr. Marone: We've gotten 107 back. And we're working through those cases, files,
321 results to see where we are and I believe we've gotten through 66 of them to this point.
322 Does anyone have any questions?

323 Mr. Marone: We have a meeting scheduled with the Commonwealth Attorneys, a group
324 of Commonwealth Attorneys, on Friday and a group, the Mid-Atlantic Innocence Project
325 on Monday to review the procedures that we're going through and how we're processing
326 these cases to meet this triage, if you will, how we're arriving at that, in addition, how
327 we're going to contact individuals with information as we have it and ask them for their
328 cooperation to sort these issues out. Those meetings will be, like I said, in the next
329 couple of days.

330

331 Mr. Benjamin - When are you going to report the results of the 66?

332

333 Mr. Marone: The results will be given to those folks first and then it's up to the
334 Governor to release it publicly.

335

336 Mr. Benjamin - Those folks would be?

337

338 Mr. Marone - The innocence project is meeting next Monday and the Commonwealth
339 Attorney's on Friday.

340

341 Mr. Benjamin - When does the Governor get them?

342

343 Mr. Marone - The Governor has them.

344

345 Mr. Benjamin - He has them?

346

347 Mr. Marone - Yeah.

348

349 Mr. Benjamin - It's his call now, when to release them?

350

351 Mr. Marone: That's correct. I mean the, we met with the Governor and his Chief of
352 Staff a few weeks ago; he went over the entire process with us-suggested these meetings
353 to get cooperation from the interested parties, if you will. Questions were like, "Well
354 how, what defense aspect are we going to contact?" Well we'll look to see who the
355 Attorney of Record was, see if we can contact that person and if not, go to the innocence
356 project or whatever. So the final workings of how this release is going to be was done at
357 that meeting a few weeks ago.

358

359 Dr. Rudin - Couple of questions, just trying to get a handle on all these numbers-do they
360 represent the totality of all these "Mary Jane files?"

361

362 Mr. Marone - Yes they do.

363

364 Dr. Rudin - And you mention,

365

366 Mr. Marone - Keep in mind, excuse me, the 500 and some odd thousand that we were
367 looking at are all the cases in, none of these cases are automated, they're not in the LIMS
368 system. So what we had to do was physically go through every file folder and find out
369 whether it was a firearms case or a drug case or whatever. Once we found that if the
370 case that's got evidence in it, then it goes into a database where we start listing names,
371 dates, what kind of evidence and so forth. So that 2,208 are cases with crime scene
372 evidence and a named suspect and those are the ones that really are of interest, but we're
373 going from there-that we can do something with.

374

375 Dr. Rudin - So part of the criteria and I know that you don't have time to go into all of it,
376 that called the 2,208 from the, I guess, 518, 431 were for example, was there biological
377 evidence and was there evidence at all and as well as some other things?

378

379 Mr. Marone - Correct.

380

381 Dr. Rudin - Of the cases that have been selected to go to the private lab, you said 166
382 total, again is that the total that has been sent to a private lab from the beginning?

383

384 Mr. Marone - That is correct.

385

386 Dr. Rudin - And then total, what you've received back is 107, the 66, does that include
387 some of the cases we heard about last time where there was no?

388

389 Mr. Marone - No. Those are the original 31.

390

391 Dr. Rudin - Yes

392

393 Mr. Marone - No.

394

395 Dr. Rudin - So how do the 31 fit into this?

396

397 Mr. Marone - They don't. They're over here. They've already been done. They've re-
398 worked with the exception of the ones we had to follow up on. There were four. And it's
399 like a separate project. We're doing everything else.

400

401 Dr. Rudin - At what point did those branch off? That's what I'm trying to get a little
402 better handle on-they were originally part of the 534,000?

403

404 Mr. Marone - Correct.

405

406 Dr. Rudin - At what point did those 31 branch off in your, what you just told us today?

407

408 Mr. Marone - Whenever the Governor decided we were going to go back and do all of
409 them as opposed to a 10% sampling.

410

411 Dr. Rudin - So they were a part of the maybe 2,208? That's what I'm trying to get a
412 handle on.

413
414 Mr. Marone - No. They've been separate all along.

415
416 Dr. Rudin - I see.

417
418 Mr. Marone - We did these and then he said, "Go back and do the rest of them."

419
420 Dr. Rudin - so the 31 were originally part of the 534K, they were included separate and
421 then we have this whole scheme you just told us today?

422
423 Mr. Marone - Right.

424
425 Dr. Rudin - so at this point, 107 back and 66 have currently been reviewed, the Governor
426 has the summary and then your meeting with the agencies about those later?

427
428 Mr. Marone - Correct.

429
430 Dr. Rudin - Thank you very much. I appreciate it.

431
432 Mr. Bono - Can I make a suggestion? When we address this issue, especially these Mary
433 Jane, the Mary Jane questions, Mary Jane cases, in future presentations Pete, would you
434 be able to have a flow chart so we can see where these numbers are because I have a hard
435 time visualizing and I'm sure Norah does also and everyone else regarding where these
436 numbers fit into the total. And even if it's an overhead or something that we can look at
437 to put this into perspective. I think that would help us all.

438
439 Mr. Benjamin - who's in charge, Pete, of going through the files and determining how
440 many have evidence and a named suspect and I think you said before you used graduate
441 students.

442
443 Mr. Marone - Graduate students were just identifying those files that had evidence in
444 them. And they are also the individuals, they're employees too, they are part-time
445 employees, who are also then taking that data and entering it in to the database so we can
446 track these cases for whatever reason in the future we need to go back.

447
448 Mr. Benjamin - In doing that initial search, who was the supervisor, who's in charge?

449
450 Mr. Marone - David Barron, the Director of Technical Services. Now who's doing the
451 assessment of the 473 cases to see where they're going? That's done by our Central
452 Laboratory Supervisor in Forensic Biology, Lisa Schiermeier-Woods and senior
453 examiners are doing that.

454
455 Mr. Benjamin - It sounded that there is a distinction between, you're only looking for
456 those with, you said, the higher level felonies?

457

458 Mr. Marone - That was one of the original parameters that Governor Warner set looking
459 at homicides, aggravated assaults, rape cases, sexual assault cases and not addressing
460 B&E type cases or you know, lower level cases, if you will. We're looking for the
461 crimes against the person-type-the higher felonies.

462

463 Mr. Bono - I think Norah has a question.

464

465 Mr. Marone - Also, while these things are in the database, so questions come up we can
466 always go back and see where they fit.

467

468 Dr. Rudin - Two more clarifications, of the original 31, there was a portion of those, I
469 believe, four of which there was no suspect sample available-that was a portion of those
470 31? Am I correct in that?

471

472 Mr. Marone - That is correct. They were four.

473

474 Dr. Rudin - That was the four, so there were four that you were still looking for suspect

475

476 Mr. Benjamin - Have we been able to get those four?

477

478 Mr. Marone - Michelle, correct me if I'm wrong, one of the individuals is deceased, one
479 of them has refused to give us a sample, the other two?

480

481 Ms. Gowdy - As I recall correctly, the other two, they couldn't get the sample for some
482 reason and I don't recall, but we have a letter from the Sheriff's Office indicating why

483

484 Dr. Rudin - So they will remain unresolved?

485

486 Mr. Benjamin - Can you share that information why these can't find the other two?

487

488 Ms. Gowdy - I can find it, and I don't have it here.

489

490 Dr. Rudin - I'm sorry, one more follow up question-I understand why you're
491 concentrating on the violent crimes and crimes against persons, it makes total sense-if
492 there were a convicted felon who felt that they wanted you to look at or review their case
493 and thought they might be amongst these and they didn't fall into your criteria, is there a
494 mechanism by which they can ask for a review of a case file?

495

496 Mr. Marone - That's a legal issue. I would assume there's a mechanism to do that, Steve,
497 did you speak to that? If you're still incarcerated, you can't.

498

499 Mr. Benjamin - You have a testing statute, that permits anyone who fulfills that criteria to
500 request testing. That's a good question because there are boundary situations with some
501 of these original charges of higher level felony, like rape, or aggravated sexual battery,
502 but then pled guilty to another offense, even breaking and entering, sounds like that may

503 be excluded, could be something sufficiently serious to put you on the registry for
504 example. So probably, that's a good question. The answer is what mechanism exists. It
505 may require a legislative solution if there's not a policy. Right now you're operating
506 under the specific directions provided to you by Governor Warner and followed up by
507 Governor Kaine.

508

509 Ms. Herndon - Mr. Chairman, my understanding is that the post-conviction testing statute
510 applied to persons convicted of a felony, but so it would apply to those and that they
511 should be eligible to go to a court and request it and they meet the criteria.

512

513 Mr. Benjamin - I think what Norah's question, what Norah properly identifies is that
514 people who are innocent or eligible for testing but have no idea that their evidence still
515 exists and that the question is fairly asked, "Should we be doing something to, even if it's
516 not included within the project's the labs doing, should we be doing something to notify
517 the people, that in fact, we've discovered that there is biological evidence from their case
518 for them to make whatever use they care to make? I think absolutely we have a duty to
519 do that question. It would be, how do we do that? How can we do that? Maybe that's a
520 question for another day, but I would certainly recommend it Mr. Chairman on this
521 board should weigh in on as a matter of policy.

522

523 Mr. Bono - Let me ask you a common sense question to someone who's not a member of
524 the bar. We talk about notifying people. People when they get these kinds of
525 notifications have no idea as to what it really means. Is there a body, a judiciary body, of
526 people who understand the law who can get such a report and then have that trickle down
527 so that if someone has the right to a further analysis, they're aware of this and they can
528 make a decision.

529

530 Mr. Benjamin - I think Katya is correct that everyone convicted of a felony has the right
531 to request testing. What we're missing are those who have been convicted of a felony, or
532 otherwise, who have no idea that there may be evidence left over that could clear them
533 and what we're talking about is notifying those who have been convicted and that that
534 evidence exists may be beneficial to them. And I think at very least, what we should do,
535 is notify them that review of files has determined that there is biological evidence or
536 DNA evidence that remains from their case, should they have any interest in exploring it.
537 Just leave it to them if they have that whether they understand the implications or not is
538 up to them.

539

540 Dr. Rudin - Perhaps an appropriate body that would have the expertise and an interest is
541 the innocence project, to be notified. Maybe they've received a list

542

543 Mr. Bono - Basically, that's what I'm talking about because if I'm incarcerated and I get
544 a letter that says, "You have a right to A, B, and C," I'm going to say, "So what?" Is
545 there a legal body, somebody that can advise these people regarding what it is they have
546 available to them to be able to make a case, so to speak.

547

548 Mr. Benjamin - The innocence project is a good, common sense practical solution

549

550 Mr. Bono – Exactly

551

552 Mr. Benjamin - The alternative would be the creation of a state commission to undertake
553 the next step of this work, but in the mean time, a good common sense answer is to put
554 this responsibility on somebody else, like the innocence project.

555

556 Mr. Bono - So do we want to come up with a suggestion or write a letter regarding what
557 Katya's talking about in terms of a protocol that should be followed?

558

559 Mr. Benjamin That's correct, yeah, I really think so because I think we are, the question
560 is fairly asked, if we are determining that biological evidence exists in cases, and under
561 the current protocol, we are not doing anything with it, I think at the very least we owe
562 the responsibility to those who have been convicted in those cases to let them know we
563 have discovered biological evidence and if we can then persuade a reliable group, such as
564 the innocence project, to take the ball from that point on, I mean, that's the ideal solution.
565 Yeah, I think we should do that.

566

567 Mr. Bono - Ok, who is we?

568

569 Mr. Benjamin - The Board

570

571 Mr. Bono – Ok, Would you be willing to

572

573 Mr. Benjamin – I know he was going to that

574

575 Mr. Bono - You know me to well,

576

577 Mr. Benjamin - yes, absolutely

578

579 Mr. Bono - If you could please?

580

581 Mr. Benjamin - I will draft a proposal

582

583 Mr. Bono - That would be great

584

585 Mr. Benjamin - yes sir

586

587 Mr. Bono - thank you very much and would you want to have this available by the next
588 meeting so we could review it or do you want to do it before the next meeting and get the
589 ball rolling, so to speak?

590

591 Mr. Benjamin – Absolutely

592

593 Mr. Bono - A or B?

594

595 Mr. Benjamin - I'll get it before the next board meeting

596

597 Mr. Bono - Ok, thank you very much. And understand, this is a legal issue which
598 somebody like you or Katya or the other people in your legal backgrounds can handle, I
599 can't.

600

601 Ms. Herndon - Mr. Chairman, if it's coming from the board, I think the board should be
602 given, if anything, the board would just be providing the innocence project with this list
603 and that there is this evidence available. But I don't think we should, as a board, be
604 providing any legal advice about this statute or what avenue they should pursue the
605 innocence project very familiar with the statute

606

607 Mr. Bono - Just making them aware of it. Ok, that's what we're talking about. Thank
608 you Katya, thank you Steve. Pete can you move on please?]

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610